

## **EXHIBIT 8**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: ) CA No. 01-12257-PBS  
          ) CA No. 05-11084-PBS  
PHARMACEUTICAL INDUSTRY AVERAGE ) CA No. 06-11337-PBS  
WHOLESALE PRICE LITIGATION     ) CA No. 07-10248-PBS  
                                      ) Pages 1 - 66

STATUS HEARING

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
May 28, 2009, 2:15 p.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617)345-6787

## 1 A P P E A R A N C E S:

2  
3 EDWARD NOTARGIACOMO, ESQ., Hagens Berman Sobol Shapiro,  
LLP, One Main Street, Cambridge, Massachusetts, 02142,  
for the Class Plaintiffs.

4  
5 JOHN A. MACORETTA, ESQ., Spector Roseman Kodroff &  
Wills, 1818 Market Street, Suite 2500, Philadelphia,  
Pennsylvania, 19103, for the Class Plaintiffs.

6  
7 JOHN T. MONTGOMERY, ESQ. and JOHN P. BUEKER, ESQ.,  
Ropes & Gray, LLP, One International Place, Boston,  
Massachusetts, 02110, for Schering and Warrick.

8  
9 FREDERICK G. HEROLD, ESQ., Dechert, LLP,  
2440 W. El Camino Real, Suite 700, Mountain View,  
California, 94040-1499, for Glaxosmithkline.

10  
11 PAUL K. DUEFFERT, ESQ., Williams & Connolly, LLP,  
725 Twelfth Street, N.W., Washington, D.C., 20005,  
for Par Pharmaceutical Companies, Inc.

## 13 ALSO PARTICIPATING:

14 NICHOLAS N. PAUL, ESQ., State of California.  
DONALD E. HAVILAND, ESQ., for Plaintiff.  
15 D. SCOTT WISE, ESQ., AstraZeneca Pharmaceuticals LP.  
LYNDON M. TRETTER, ESQ., Bristol-Myers Squibb Company.  
STEVEN F. BARLEY, ESQ., Amgen, Inc.  
ANDREW D. SHAU, ESQ., Johnson & Johnson.  
GEORGE B. HENDERSON, AUSA, United States of America.  
JOANNE M. CICALA, ESQ., New York City, New York Counties.  
SUSAN SCHNEIDER THOMAS, ESQ., Ven-A-Care.  
WILLIAM A. ESCOBAR, ESQ., Dey and Mylan.  
PETER A. MULLIN, ESQ., Commonwealth of Massachusetts.  
MERLE M. DELANCEY, JR., ESQ., Baxter Healthcare.  
CLINTON C. CARTER, ESQ., South Carolina and Utah.  
JAMES W. MATTHEWS, ESQ., Watson Pharmaceuticals.

1 P R O C E E D I N G S

2 THE CLERK: In Re: Pharmaceutical Industry  
3 Average Wholesale Price Litigation, Civil Action 01-12257,  
4 will now be heard before this Court. Will counsel please  
5 identify themselves for the record.

6 MR. MACORETTA: Good afternoon, your Honor. John  
7 Macoretta from Spector Roseman Kodroff & Wills for the class  
8 plaintiffs.

9 MR. NOTARGIACOMO: Ed Notargiacomo from Hagens  
10 Berman Sobol Shapiro for the class plaintiffs as well as for  
11 the states of Arizona, Montana, and Nevada.

12 MR. MONTGOMERY: John Montgomery from Ropes & Gray  
13 for Schering and Warrick, your Honor.

14 MR. BUEKER: Good afternoon, your Honor. John  
15 Bueker, also from Ropes & Gray, for Schering and Warrick.

16 MR. HEROLD: Good afternoon, your Honor. Fred  
17 Herold, Dechert, for GSK.

18 MR. DUEFFERT: Good afternoon, your Honor. Paul  
19 Dueffert, Williams & Connolly, for Par Pharmaceutical, Inc.

20 THE COURT: I recognize a lot of people sitting  
21 back there. I'm not sure it's necessary for everyone to  
22 introduce themselves, although I will encourage  
23 participation. My goal in doing this is twofold: One is  
24 just to get a handle on all the different cases that have  
25 made up the AWP MDL. It's now been eight years, going on

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1                   THE COURT: Because I didn't even do it and stay  
2                   it, all right.

3                   MR. WISE: You decided to wait and see what the  
4                   Circuit did.

5                   THE COURT: Okay. So that will be a huge thing  
6                   for me to do after the --

7                   MR. MACORETTA: First Circuit rules.

8                   THE COURT: -- the First Circuit rules, if it  
9                   doesn't sort of wipe out the core ruling.

10                  MR. MACORETTA: Yes.

11                  THE COURT: Okay. So AstraZeneca, there's nothing  
12                  for me to do.

13                  MR. MACORETTA: No.

14                  THE COURT: That's a lovely thought, all right.

15                  MR. MACORETTA: BMS, there is also nothing for you  
16                  to do because, as we referenced, we have reached a global  
17                  settlement with BMS.

18                  THE COURT: All right, so, now, we've had a bad  
19                  experience in Track 2 because it's taken so long to get some  
20                  of the data to even be able to send out the notice. So the  
21                  reason I wanted to find out is, where are we on the BMS  
22                  notice?

23                  MR. NOTARGIACOMO: What we did, anticipating there  
24                  might be a settlement with BMS, when we put in the request  
25                  for the Track 2 data, we also threw in the BMS drugs, so

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1 that when we get that data, we will also get the BMS data  
2 and won't have to wait for that.

3 THE COURT: When do you want to schedule a  
4 preliminary approval hearing?

5 MR. NOTARGIACOMO: We're going to be filing  
6 something on the Track 2 -- on BMS?

7 THE COURT: Yes.

8 MR. NOTARGIACOMO: There's an allocation meeting  
9 between the consumers and the TPPs in BMS on June 22, and we  
10 expect to file motions for preliminary approval in early  
11 July.

12 THE COURT: So shall we get that date on the  
13 calendar? Are there likely to be -- do you have class reps?

14 MR. MACORETTA: We do, we do.

15 THE COURT: And are you expecting -- I mean, the  
16 number of objections, really, in both the McKesson and the  
17 Track 2 started flowing in at the preliminary approval  
18 stage, I believe, and --

19 MR. MACORETTA: That's right.

20 THE COURT: So are we expecting that you know of a  
21 full-blown preliminary approval hearing that will take a lot  
22 of time?

23 MR. MACORETTA: It would be unusual if we didn't  
24 have one in this case right, Judge?

25 THE COURT: Well, I always have a preliminary

1 approval hearing.

2 MR. MACORETTA: There's been objections to the  
3 preliminary approval in AstraZeneca and GSK as well, I  
4 think, so --

5 THE COURT: For the last two. So now that  
6 everyone's here, let's set a date. Robert, do we have an  
7 afternoon? Maybe the third week in July, does that sound  
8 right?

9 MR. MACORETTA: Judge, I believe there's something  
10 July 23.

11 THE COURT: Well, beautiful.

12 MR. MACORETTA: But I don't know what that is. Is  
13 that the --

14 THE CLERK: That's McKesson final approval.

15 THE COURT: That's McKesson final approval. I  
16 think that's too much. But if we did them back to back  
17 maybe, then people who would be in town otherwise --

18 THE CLERK: The 24th. It's a Friday.

19 THE COURT: The 24th?

20 MR. MACORETTA: That's fine for us, I think, your  
21 Honor.

22 THE COURT: For a preliminary approval hearing.  
23 Who's from Bristol Myers? There you are.

24 MR. TRETTER: Hi, your Honor.

25 THE COURT: You're so far back, you're trying to

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1 stay out of the courtroom. So is that a day acceptable to  
2 you?

3 MR. TRETER: I'm furiously going through the  
4 little calendar on my Blackberry, but I'll say "yes" to the  
5 24th of July. Unless you hear from me otherwise, yes.

6 MR. NOTARGIACOMO: The same for plaintiffs, your  
7 Honor, we'll have to check with other counsel to see if that  
8 works, but assuming it does --

9 THE COURT: My theory was to do it back to back  
10 with McKesson on the theory that some of the players were  
11 overlapping, and I know Mr. Berman tends to come in from  
12 across the country, and I think other people are coming up  
13 from other locations. What's the 24th, is it a Friday?

14 THE CLERK: Yes.

15 THE COURT: And then they can do Cape Cod the next  
16 day.

17 (Laughter.)

18 MR. MACORETTA: I'll point that out to Mr. Berman.  
19 And, of course, you know, we have a settlement in principle  
20 with BMS. We --

21 THE COURT: I understand. If it falls apart, it  
22 does. Maybe we'll just use that date as a status to figure  
23 out what I do next.

24 MR. TRETER: So what time, your Honor?

25 THE COURT: Do you want to do it at 2:00 o'clock?

1 And then you can --

2 MR. MACORETTA: We can do it in the morning,  
3 Judge.

4 THE COURT: You know what my problem is? I know  
5 no one wants to be doing this Friday afternoon. I just  
6 never know what my trial schedule looks like. What does the  
7 24th look like in the afternoon? Anything else?

8 THE CLERK: No. It's open.

9 THE COURT: Why don't I put it on at 2:00 o'clock.  
10 Now, here's the thing: Keep in touch with Mr. Alba because  
11 if I'm not on trial, I'm happy to move it into the morning.  
12 I have a solid block for you on the Friday in the afternoon,  
13 okay? All right. So that's BMS.

14 MR. MACORETTA: That's BMS. And that leaves us  
15 with the Track 2 global settlement, Judge.

16 THE COURT: And where are we on that?

17 MR. MACORETTA: All the notice has not yet gone  
18 out because we still haven't gotten the right data from CMS.

19 THE COURT: When are you going to get that data?

20 MR. NOTARGIACOMO: We're working with them. We're  
21 trying to get it in so that we can request another final,  
22 final approval hearing in late July or early August, and it  
23 looks like --

24 THE COURT: But help me with this. So when do you  
25 think that the notice can go out?

1                   MR. NOTARGIACOMO: By the end of this month, the  
2 end of June.

3                   THE COURT: The end of June, notice?

4                   MR. NOTARGIACOMO: And then we want to give  
5 consumers 30 days to respond. All they have to do is send  
6 back a postcard that's pre --

7                   THE COURT: All right, so let's just play this  
8 out, though. Maybe we should do a little longer because a  
9 lot of people vacation. I mean, I don't know if this group  
10 necessarily. Actually, this is a huge group. This isn't  
11 necessarily my -- most people, a lot of people won't even  
12 focus on it till -- maybe give maybe 40 days or something,  
13 give that extra ten days for the July 4 period of time. And  
14 then when would the approval -- people vacation in August,  
15 this is my concern, so I want to give people advanced --  
16 when do you think would make sense to do a hearing, the  
17 second week in August, before the tail end?

18                  MR. NOTARGIACOMO: If you're going to give them  
19 40 days, I might push it out a little bit, your Honor,  
20 either -- I know you're reluctant to do it in the last two  
21 weeks of August because that's prime vacation schedule.

22                  THE COURT: Yes, for lawyers as well as judges and  
23 consumers, so I'm thinking of the second --

24                  MR. NOTARGIACOMO: Week in August?

25                  THE COURT: Yes. And we can always cancel it if

1 it turns out not to be right.

2 So when can we do it, Robert? Do we have an  
3 afternoon in there somewhere?

4 THE CLERK: August 11 at 2:00 p.m.

5 THE COURT: So that would be the final approval  
6 hearing, is that right?

7 MR. NOTARGIACOMO: That's correct.

8 MR. MACORETTA: Part two. Your Honor had a  
9 hearing.

10 THE COURT: Well, I'm curious as to whether -- I  
11 think I do need another hearing, but there are also a series  
12 of objections I haven't ruled on and are being briefed,  
13 right?

14 MR. MACORETTA: Yes, and we want to submit further  
15 briefing on a lot of these issues, yes, which we will do  
16 well in advance of this.

17 THE COURT: Well in advance because there were a  
18 number of objections, some of which I responded to through  
19 this supplemental notice requirement. Okay.

20 MR. MACORETTA: Was that 2:00 o'clock as well?

21 THE COURT: Yes.

22 THE CLERK: That's correct.

23 MR. NOTARGIACOMO: Yes, there is one piece of  
24 this, your Honor, that I don't know the answer to that might  
25 affect that date, and that is the supplemental notice that

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1 you just mentioned to cash payors, and we're working on a  
2 publication schedule. I assume we can work with that date,  
3 but if not --

4 THE COURT: If not, we'll push it into September.

5 MR. NOTARGIACOMO: Okay.

6 THE COURT: There are so many people here from the  
7 Track 2 settlement. Is there any reason anyone knows of  
8 that August 11 would be an impossible date for any of the  
9 key players who have been very active in negotiating that  
10 settlement? There are what, how many defendants, how many  
11 companies?

12 MR. NOTARGIACOMO: I think, depending on how you  
13 count them, eleven or thirteen defendants.

14 THE COURT: All right. Has there been one  
15 particular spokesperson who's been involved in the  
16 settlement?

17 MR. MACORETTA: There's been a few. I wouldn't  
18 want to put it on just one person, Judge. I don't see  
19 anybody here.

20 MR. BARLEY: I've spoken for the defendants at a  
21 number of hearings, your Honor. Steve Barley for AmGen. Is  
22 there a particular issue?

23 THE COURT: I just want to make sure you're  
24 available on that date.

25 MR. BARLEY: I'm available.

1                   THE COURT: Okay. And so is there someone who's  
2       been sending out e-mails on behalf of the defendants?

3                   MR. BARLEY: I'm happy to do that.

4                   THE COURT: Would you, if we have to change it  
5       because the noticing doesn't go right, you'd be the point  
6       person to just make sure you touch base with Mr. Alba?

7                   MR. BARLEY: Yes, your Honor.

8                   THE COURT: Perfect, thank you. Okay.

9                   MR. MACORETTA: And then the only thing we have  
10      left --

11                  THE COURT: Did you get his name? He knows who  
12      everyone is. He talks to you all? All right.

13                  THE CLERK: Most, not all.

14                  MR. MACORETTA: The only thing we have left is  
15      Johnson & Johnson. If you'll remember, you granted them  
16      summary judgment. That's on appeal as well.

17                  THE COURT: But that's on appeal.

18                  MR. MACORETTA: That's on appeal, so that's --

19                  THE COURT: Okay, so now you're done.

20                  MR. MACORETTA: Now we're done.

21                  THE COURT: So essentially there are no more  
22      dispositive motions that you have outstanding with me that  
23      need to be resolved?

24                  MR. MACORETTA: Not before the First Circuit.

25                  THE COURT: You're almost done with me, depending